

10 BRENT AMBERS, JUDITH AMBERS,
11 Plaintiffs,
12 v.
13 WELLS FARGO BANK, HS FUNDING
14 GROUP; CAL WESTERN
RECONVEYANCE CORP.,
15 Defendants.

Case No. 15-cv-04100 NC

**ORDER GRANTING DEFENDANT
WELLS FARGO'S MOTION TO
DISMISS**

Re: Dkt. No. 6

17 Brent and Judith Ambers sue Wells Fargo and others for the foreclosure of their
18 home in 2012. This Court previously dismissed a similar case by Judith Ambers against
19 Wells Fargo in April 2014, after Judith Ambers chose not to amend her complaint. Now,
20 Wells Fargo moves to dismiss the 2015 case, arguing that the doctrine of res judicata bars
21 the Ambers from relitigating issues from the prior lawsuit. The Court agrees and finds that
22 res judicata bars the entire action against Wells Fargo. Thus, the Court GRANTS Wells
23 Fargo's motion to dismiss.

24 **I. BACKGROUND**

25 **A. 2013 Lawsuit, No. 13-cv-03940 NC**

26 On August 23, 2013, Judith Ambers sued Wells Fargo Bank in Alameda County
27 Superior Court, challenging a mortgage foreclosure on a 2006 loan taken out by her
28 husband Brent Ambers. Dkt. No. 1. Defendant Wells Fargo removed the case to federal
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1 court, then moved to dismiss the complaint. Dkt. Nos. 1, 8. On March 3, 2014, the Court
2 granted Wells Fargo's motion to dismiss, finding that Judith Ambers did not have standing
3 to sue, and in the alternative, that she failed to state a claim. Dkt. No. 25. The Court
4 permitted Ambers to amend the complaint by March 28, 2014. Dkt. No. 25. Ambers did
5 not amend the complaint. Dkt. No. 26. On April 21, 2014, the Court dismissed the case
6 with prejudice and entered judgment in favor of Wells Fargo. Dkt. Nos. 26, 27.

7 **B. Current Lawsuit**

8 On May 20, 2015, Brent and Judith Ambers sued defendants Wells Fargo, HS
9 Funding Group, and Cal Western Reconveyance Corp. in Alameda County Superior Court.
10 Dkt. No. 1-1 at 6. On August 23, 2015, Wells Fargo timely removed the case to federal
11 court. Dkt. No. 1 at 2. The Ambers sue regarding the loans on the same property as the
12 2013 suit. Dkt. Nos. 1-1 at 6. According to Wells Fargo, the Ambers defaulted on their
13 loan with Wells Fargo in 2009 and the bank foreclosed on the loan on January 24, 2012.
14 Dkt. No. 6 at 4. As a result, the property was sold to a third party and the deed transferring
15 title was recorded on February 9, 2012. *Id.* Wells Fargo is the only defendant that has
16 appeared in this action. Dkt. No. 1 at 3-4. On November 16, 2015, the Court ordered the
17 Ambers to show cause why it should not dismiss HS Funding Group and Cal Western
18 Reconveyance Corp. for failure to serve the defendants. Dkt. No. 24. The Ambers did not
19 file any proof of service, so the Court dismissed HS Funding Group and Cal Western
20 Reconveyance Corp. on December 7, 2015.

21 On September 16, 2015, Wells Fargo moved to dismiss the complaint, arguing that
22 res judicata barred relitigation of the issues already decided in the 2013 case, and that the
23 statute of limitations has passed. Dkt. No. 6. Plaintiffs and Wells Fargo have consented to
24 the jurisdiction of a magistrate judge. Dkt. Nos. 11, 21-22.

25 **II. DISCUSSION**

26 Res judicata, also known as claim preclusion, bars litigation in a subsequent action
27 of any claims that were raised or could have been raised in the prior action. *W. Radio*
28 *Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). "Res judicata prevents

1 litigation of all grounds for, or defenses to, recovery that were previously available to the
2 parties, regardless of whether they were asserted or determined in the prior proceeding.”
3 *Brown v. Felsen*, 442 U.S. 127, 131 (1979). Res judicata “has the dual purpose of
4 protecting litigants from the burden of relitigating an identical issue with the same party or
5 his privy and of promoting judicial economy by preventing needless litigation.” *Parklane*
6 *Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979).

7 In order for res judicata to apply there must be: (1) an identity of claims, (2) a final
8 judgment on the merits, and (3) identity or privity between parties. *W. Radio Servs. Co.*,
9 123 F.3d at 1192.

10 **1. Identity of Claims**

11 In determining whether successive claims constitute the same cause of action, the
12 Court considers (1) whether rights or interests established in the prior judgment would be
13 destroyed or impaired by prosecution of the second action; (2) whether substantially the
14 same evidence is presented in the two actions; (3) whether the two suits involve
15 infringement of the same right; and (4) whether the two suits arise out of the same
16 transactional nucleus of facts. *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201-02
17 (9th Cir. 1982). “The last of these criteria is the most important.” *Id.* at 1202. The Ninth
18 Circuit has found that satisfaction of the fourth factor alone is sufficient to establish an
19 identity of claims. *See Int'l Union of Operating Eng'rs-Employers Constr. Indus. Pension,*
20 *Welfare and Training Trust Funds v. Karr*, 994 F.2d 1426, 1430 (9th Cir. 1993) (citing
21 cases finding successive claims barred by res judicata based only on analysis of the fourth
22 factor).

23 “[I]dentity of claims exists when two suits arise from the same transactional nucleus
24 of facts. Newly articulated claims based on the same nucleus of facts may still be subject
25 to a res judicata finding if the claims could have been brought in the earlier action.”
26 *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1078
27 (9th Cir. 2003). If claims are related to the same set of facts and could be conveniently
28 tried together, then there is identity of claims. *Karr*, 994 F.2d at 1429; *see also Herrera v.*

1 *Countrywide KB Home Loans*, No. 11-cv-03591 LHK, 2012 WL 901340, at *4 (N.D. Cal.
2 Mar. 15, 2012) (finding that when if plaintiff could have amended the prior complaint to
3 allege the successive claims, then identity of claims exists).

4 In the prior lawsuit, Judith Ambers brought seven claims regarding the origination
5 and eventual foreclosure of the home loan against Wells Fargo. Dkt. No. 6 at 6; 2013 Dkt.
6 No. 1 at 21-37. The current lawsuit presents twelve claims, all of which relate to the same
7 loan and foreclosure. Dkt. No. 1-1 at 5-28. Although the current complaint alleges more
8 claims, both lawsuits arise out of the same nucleus of operative fact: the issuance and
9 foreclosure of the same home loan. The second complaint does not contain new facts, nor
10 does it refer to events that occurred after the 2013 lawsuit was dismissed. The Ambers'
11 opposition to Wells Fargo's motion to dismiss did not address the issue of whether this
12 lawsuit is about a different nucleus of facts.

13 The Court has reviewed the complaint and finds that the two lawsuits arise out of
14 the same nucleus of facts, and all of the additional causes of action present in the 2015
15 lawsuit could have been filed as part of an amended complaint to the 2013 lawsuit. For the
16 same reasons, both lawsuits would require substantially the same evidence and
17 infringement of the same right. Thus, the first element of the res judicata test is satisfied.

18 **2. Final Judgment on the Merits**

19 "The dismissal for failure to state a claim under Federal Rule of Civil Procedure
20 12(b)(6) is a judgment on the merits." *Federated Dep't Stores v. Moitie*, 452 U.S. 394,
21 399 n.3 (1981). In the 2013 lawsuit, the Court entered judgment in favor of Wells Fargo
22 and against plaintiff in accordance with its April 2014 order dismissing the action. 2013
23 Dkt. No. 27. The Court found that Judith Ambers lacked standing because the loan was in
24 Brent Ambers name, who was not a party to the 2013 litigation. The Court determined that
25 even if Judith Ambers had standing, she failed to state a claim under Federal Rule of Civil
26 Procedure 12(b)(6). 2013 Dkt. No. 25. Therefore, there was a judgment on the merits in
27 the 2013 case, and the second element of the res judicata test is satisfied.

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3. Identity or Privity Between Parties

Finally, the Court must consider whether there is identity or privity of parties in the two actions. Privity exists when a party is “so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.” *Stratosphere Litig. LLC v. Grand Casinos, Inc.*, 298 F.3d 1137, 1142 n.3 (9th Cir. 2002).

Here, Judith Ambers filed the 2013 first lawsuit, while both Judith and Brent Ambers filed the 2015 lawsuit. However, the Court dismissed the first case in part, because it determined that Judith Ambers did not have standing to assert the claims about a fraudulent loan and unlawful foreclosure when Brent Ambers was the sole borrower of the loan. Thus, the Ambers share the same legal interest in recovering for an allegedly improper loan and foreclosure on the same property as listed in the 2013 case. The Court finds that the plaintiffs are in privity.

In addition, Wells Fargo was named as a defendant in both the 2013 and 2015 lawsuits. In the 2015 lawsuit, HS Funding Group and Cal Western Reconveyance Corp. were added as additional parties; however, the Court has already dismissed those defendants from the case. Thus, the same defendant is in both lawsuits, so the third element of the res judicata test is met.

Accordingly, the Court finds that the 2015 lawsuit presents an identity of claims, there was a final judgment on the merits in the 2013 lawsuit, and there is privity between the parties. *W. Radio Servs. Co.*, 123 F.3d at 1192. Therefore, the Ambers' claims are barred by the doctrine of res judicata.

111

1 **III. CONCLUSION**

2 The Court concludes that the doctrine of res judicata bars relitigation of this lawsuit.
3 The Court GRANTS Wells Fargo's motion to dismiss and DIMISSES the complaint
4 WITHOUT LEAVE TO AMEND.

5 **IT IS SO ORDERED.**

6 Dated: December 8, 2015

7 
8 NATHANAEL M. COUSINS
9 United States Magistrate Judge